

### **365.563 Definitions for KRS 365.561 to 365.613.**

As used in KRS 365.561 to 365.613, unless the context otherwise requires:

- (1) "Trademark" means any word, name, symbol or device including, but not limited to, a distinctive package or container of any kind, or any combination of these, used by a person to identify and distinguish the goods of that person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown.
- (2) "Service mark" means any word, name, symbol or device or any combination of these, used by a person to identify and distinguish the services of one (1) person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, advertise the goods of the sponsor.
- (3) "Mark" includes any trademark or service mark entitled to registration under KRS 365.561 to 365.613, whether registered or not.
- (4) "Trade name" means any name used by a person to identify his business or vocation.
- (5) "Person" and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of KRS 365.561 to 365.613 means a juristic person as well as a natural person. The term "juristic person" includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.
- (6) "Applicant" means the person filing an application for registration of a mark under KRS 365.561 to 365.613, and the legal representatives, successors, or assigns of that person.
- (7) "Registrant" means the person to whom the registration of a mark under KRS 365.561 to 365.613 is issued, and the legal representatives, successors, or assigns of that person.
- (8) "Use" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of KRS 365.561 to 365.613, a mark shall be deemed to be in use:
  - (a) On goods when it is placed in any manner on the goods or on containers or displays associated with the goods or on tags or labels affixed to the goods, or if the nature of the goods makes placement on the goods impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state; and
  - (b) When it is used or displayed in the sale or advertising of services and the services are rendered in this state.
- (9) A mark shall be deemed to be "abandoned" when:
  - (a) Its use has been discontinued with intent not to be resumed. Intent not to resume may be inferred from circumstances. Nonuse for two (2) consecutive years shall constitute a rebuttable presumption of abandonment; or

- (b) Any course of conduct of the owner, including acts of omission and commission, causes the mark to lose its significance as a mark.
- (10) "Secretary" means the Secretary of State or the designee charged by him with the administration of KRS 365.561 to 365.613.

**Effective:** July 15, 1994

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